

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

June 13, 1996

Mr. Jim Richardson  
Chief Administrative Officer  
Assembly Rules Committee  
Room 3016, State Capitol  
Post Office Box 942849  
Sacramento, California 94249-0001

Re: Your Request for Advice  
Our File No. A-96-159

Dear Mr. Richardson:

This is in response to your request for advice regarding the "gift" and "contribution" provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Will any of the payments or expenditures made in connection with the senior citizen conference be considered contributions or gifts to Assemblywoman Speier?

### CONCLUSION

As discussed below, the food, complimentary gifts, and door prizes paid for by corporate sponsors or donated by businesses will be considered contributions to the Assemblywoman. No other payments in connection with the event will be considered contributions or gifts.

### FACTS

An event has been planned by Assemblywoman Speier and her staff in conjunction with a volunteer advisory committee, which consists of 14 senior citizens in Assemblywoman Speier's district. Pursuant to these plans, Assemblywoman Speier and her staff have obtained commitments from several cosponsors, consisting of

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<sup>1</sup> Government Code Sections 81000-91015. Commission regulations appear at Title 2, Sections 18000-18995 of the California Code of Regulations.

various local government agencies (e.g., San Mateo County Commission on Aging), nonprofit corporations (e.g., AARP), and corporations (e.g., Pacific Bell, and Pacific Gas and Electric) to provide volunteer or financial support for the conference.

The conference will be held at the San Francisco Airport Hilton. The Hilton will not charge a separate fee for the use of the facility, as is standard practice when the Hilton hosts a large event of this nature. The Hilton's charge for food costs will be on a sliding scale based on the number of participants, as is standard for any group of this size. According to the Hilton, food costs are always flexible and negotiable for these types of events, based on various factors, including number of participants, time of year, or day of week. Assemblywoman Speier will be treated the same as any other group, public or private, doing business with the Hilton. The food costs will be paid directly to the Hilton by the corporate sponsors.

Various local businesses will contribute complimentary gifts, decorations and door prizes. For example, a local pumpkin patch will contribute pumpkins, unsold for Halloween, for use as table centerpieces. Local businesses will contribute items for door prizes and these businesses will be acknowledged as the donor. Each attendee will be given a complimentary gift, paid for by the corporate sponsors, (e.g., fanny packs with the Assembly seal and Assemblywoman Speier's signature).

The Assembly will provide the resources to produce, not mail, the flyer, program, registration, and other printed informational materials. Posters and flyers will be hand-delivered by senior volunteers to senior centers. Programs will be available at the conference. Expenses incurred in mailing registration confirmation notices will be paid for from the Assemblywoman's officeholder campaign account.

The speakers and presenters will be from local government agencies and nonprofit organizations such as the San Mateo County Commission on Aging and AARP. None of the speakers or presenters will be paid for their services, nor will their travel expenses be reimbursed. All speakers, moderators and facilitators will be either volunteers or participating as part of their job. These individuals will bring the handouts and other materials for the information booths. The information booths will be staffed by volunteers or others working in their official capacity.<sup>2</sup>

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The facts presented in the request for advice were supplemented by a telephone conversation with Kevin Mullin of Assemblywoman Speier's office.

### DISCUSSION

Payments received by a candidate are generally considered contributions or gifts. Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his or her committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. Thus, as an elected official, each legislator is considered a candidate under Section 82007.

Where payments are received by a "candidate," the payment is presumed to be a contribution, unless some exception exists. Regulation 18215 defines "contribution" as any payment made for political purposes. A payment is made for political purposes if it is: (1) for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or (2) received by or made at the behest of a candidate. (Regulation 18215(a).) Regulation 18215(b)(3) provides that a contribution includes "[a]ny goods or services received by or behested by a candidate or committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public."

Thus, any payments received by a legislator, or made at that legislator's behest is presumed to be for political purposes and will be considered contributions absent an exception. (Danner Advice Letter, No. A-96-039.) A payment is made at the "behest" of a candidate if the payment is made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" the candidate. (Regulation 18225.7(a).)

Note that the Act does not prohibit or limit an officeholder's receipt of contributions in connection with governmental events. Contributions must merely be disclosed on the officeholder's periodic reports. Moreover, by concluding a payment received for a governmental event is a "contribution," this does not in any way construe the event to be a "campaign" event for which public funds could not be used pursuant to Section 85300.

Where a payment is not a contribution, it may in some circumstances be considered a gift. "Gift" is defined in Section 82028 as any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. The term "gift" does not include material which serves primarily to convey information and

which is provided for the purpose of assisting the recipient in the performance of his or her official duties. (Section 82028; Regulation 18942.1.)

#### ANALYSIS

1. Location. The senior citizens conference will take place at the San Francisco Airport Hilton. You state that the Hilton will not charge a fee for holding the event on its premises, as is standard practice when the Hilton hosts a large event of this nature. In this regard, Assemblywoman Speier will be treated the same as any other public or private group doing business with the Hilton. Accordingly, the exception in Regulation 18215(b)(3) for discounts given in the regular course of business to members of the public will apply, and no contribution will result.

2. Food Costs. You state that the cost of the food provided by the Hilton will be calculated on a sliding scale based on the number of participants and will be paid for by the corporate sponsors including Pacific Bell, and Pacific Gas and Electric. Because Assemblywoman Speier is planning the conference and handling the arrangements for the location and food, the costs of the food which is paid for by the other corporate sponsors will be considered contributions to her under the Act. (See Schmidt Advice Letter, No. A-96-072, in which costs of refreshments and a closing dinner paid for by non-Senate entities at a Pacific Rim conference were considered contributions to the Senators cosponsoring the event.)

3. Complimentary Gifts, Decorations, Door Prizes. Local businesses will donate decorations and door prizes for the conference. In addition, each conference attendee will be given a fanny pack with the Assembly seal and Assemblywoman Speier's signature on it. The fanny packs will be paid for by the corporate sponsors. Because the Assemblywoman is arranging the conference and coordinating these decorations, prizes, and gifts, the costs of such items will be considered contributions to her under the Act.

4. Publicity and Registration. The Assembly will provide the resources to produce, not mail, the flyer, program, registration, and other printed informational materials. Posters and flyers will be hand-delivered by volunteers to senior centers. These materials paid for by legislative funds will not constitute a contribution so long as they meet the requirements of Regulation 18215(c)(4). Regulation 18215(c)(4) provides that communications are not contributions if they do not contain express advocacy, do not make reference to the candidate's candidacy for elective office or the candidate's opponent for elective office, and do not solicit contributions. Expenses incurred in mailing registration confirmation notices will be paid for from Assemblywoman Speier's officeholder campaign account and therefore do not raise contribution or mass mailing issues.

5. Speakers and Information Booths. You state that none of the speakers or presenters will be paid for their services, nor will their travel expenses be reimbursed. All speakers and moderators will be either volunteers or participating as part of their job. In the Schmidt Advice Letter, No. A-96-056, we advised that if individuals are volunteering their time, we would not consider such volunteer personal services contributions. (Regulation 18215(c)(2).) In addition, we have advised in prior letters that payments made in connection with speakers who are employees of public agencies would not be contributions to the Assemblywoman so long as the event was not "campaign" related. "Campaign activities" are delineated in Regulation 18420 to include such items as arranging a campaign event, acting in the capacity of the campaign manager or soliciting, receiving or acknowledging contributions. The event in question is not a campaign event, thus no contribution will result.

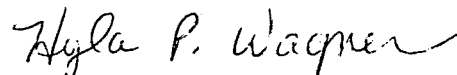
With respect to employees of the nonprofit organizations, Regulation 18423 describes when payments for the personal services of private employees may be considered a campaign contribution or expenditure. Based on your facts, the speakers would not be rendering their services for political purposes, as defined in Regulation 18423(b). Thus, the Assemblywoman incurs no reporting obligations with respect to any payments in connection with speakers.

In addition, you stated that individuals from the local government agencies and nonprofit organizations will be bringing handouts and materials for the information booths. Such materials would be considered "informational material" and not gifts. (Regulation 18942.1.)

I trust this answers your question. If you have any further questions regarding this matter, please contact me at 916/322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Hyla P. Wagner  
Counsel, Legal Division

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